

94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4761

Introduced 01/18/06, by Rep. Mark H. Beaubien, Jr.

SYNOPSIS AS INTRODUCED:

510 ILCS 5/2.19b

510 ILCS 5/15

from Ch. 8, par. 365

Amends the Animal Control Act. Authorizes the animal control warden to find a dog vicious if (i) the dog without justification, attacks a person and causes serious physical injury or death, (ii) the dog is found to be a "dangerous dog" upon 3 separate occasions, or (iii) the animal control warden determines that the dog constitutes an undue danger to the public. (now, only a circuit court may determine that a dog is "vicious"). Sets forth certain factors that must be considered in determining whether the dog is an undue danger, including: (i) the circumstances of the dog's infraction; (ii) whether the dog's behavior was justified; (iii) the breed, prior history, and physical characteristics of the dog; (iv) the recommendation of a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert in the field; (v) the report of the investigating animal control warden, deputy administrator, or law enforcement officer; and (vi) Department guidelines. Requires that the animal control warden give notice of the infraction that is the basis of the investigation to the owner and conduct a thorough investigation prior to a vicious determination. Provides that the owner of a dog found to be vicious by the animal control warden shall be subject to a fine in the amount of \$5,000, for each vicious finding, to be assessed by local law enforcement. Prohibits an order that a vicious dog be euthanized without judicial review. Authorizes the State's Attorney or any citizen of the county in which the dog exists to file a complaint in the circuit court asking that the court find the dog to be a vicious dog. Sets forth that all costs of impoundment, disposition, boarding, medical, or other costs related to the determination shall be borne by the owner. Requires the petitioner to prove the dog is a vicious dog by clear and convincing evidence; however, if animal control warden has found the dog to be vicious then there is a mandatory presumption that the dog is vicious. Sets forth conditions for appealing vicious dog determinations. Provides that the court proceeding for determining a dog vicious shall be an available remedy in addition to and independent of the determination of the animal control warden. Authorizes the finder of fact to consider the breed of the dog in any determination as to whether an individual dog is vicious. Requires the animal control warden to follow guidelines promulgated by the Department for determining that a dog is vicious. Sets forth that in adopting the guidelines, the Department shall follow the rulemaking procedures of the Illinois Administrative Procedure Act. Makes other changes. Effective immediately.

LRB094 18883 RSP 54327 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning animals.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Animal Control Act is amended by changing
5 Sections 2.19b and 15 as follows:

6 (510 ILCS 5/2.19b)

7 Sec. 2.19b. "Vicious dog" means a dog found to be vicious
8 under Section 15 of this Act ~~a dog that, without justification,~~
9 ~~attacks a person and causes serious physical injury or death or~~
10 ~~any individual dog that has been found to be a "dangerous dog"~~
11 ~~upon 3 separate occasions.~~

12 (Source: P.A. 93-548, eff. 8-19-03.)

13 (510 ILCS 5/15) (from Ch. 8, par. 365)

14 Sec. 15. Vicious dog determination.

15 (a) The animal control warden shall find a dog vicious if
16 (i) the dog without justification, attacks a person and causes
17 serious physical injury or death, (ii) the dog is found to be a
18 "dangerous dog" upon 3 separate occasions, or (iii) the animal
19 control warden determines that the dog constitutes an undue
20 danger to the public. Factors that must be considered in
21 determining whether the dog is an undue danger include:

22 (i) the circumstances of the dog's infraction;

23 (ii) whether the dog's behavior was justified;

24 (iii) the breed, prior history, and physical
25 characteristics of the dog;

26 (iv) the testimony or written opinion of a certified
27 applied behaviorist, a board certified veterinary
28 behaviorist, or another recognized expert in the field who
29 has examined the dog;

30 (v) the recommendation of the investigating animal
31 control warden, deputy administrator, or law enforcement

1 officer; and

2 (vi) Department guidelines as provided under
3 subsection (f) of this Section.

4 No determination of "vicious" dog shall occur under this
5 Section without an animal control warden ~~In order to have a dog~~
6 ~~deemed "vicious", the Administrator, Deputy Administrator, or~~
7 ~~law enforcement officer giving must give~~ notice of the
8 infraction that is the basis of the investigation to the owner
9 and conducting ~~, conduct~~ a thorough investigation of the
10 incident. The investigation shall include interviewing the
11 owner and, ~~interview~~ any witnesses, ~~including the owner,~~
12 gathering ~~gather~~ any existing medical records, veterinary
13 medical records, or behavioral evidence, and making ~~and make~~ a
14 detailed written report. The animal control warden must make a
15 declaration, in writing, that the dog is a vicious dog.
16 ~~recommending a finding that the dog is a vicious dog and give~~
17 ~~the report to the States Attorney's Office and the owner.~~

18 An owner of a dog found to be vicious by an animal control
19 warden under this subsection (a) shall be subject to a fine in
20 the amount of \$5,000, for each vicious finding, to be assessed
21 by local law enforcement. Amounts collected pursuant to this
22 subsection shall be deposited in the county's animal control
23 fund.

24 A final vicious dog determination by the animal control
25 warden under this subsection (a) is an administrative decision
26 subject to judicial review pursuant to the provisions of the
27 Administrative Review Law, and all amendments and
28 modifications thereof, and the rules adopted pursuant thereto.
29 The term "administrative decision" is defined as in Section
30 3-101 of the Code of Civil Procedure.

31 An order that a vicious dog be euthanized may not be issued
32 without judicial review under subsection (a-5) of this Section.

33 (a-5) The Administrator, State's Attorney, Director or any
34 citizen of the county in which the dog exists may file a
35 complaint in the circuit court ~~in the name of the People of the~~
36 ~~State of Illinois~~ asking that the court find the ~~to deem a dog~~

1 to be a vicious dog.

2 ~~Testimony of a certified applied behaviorist, a board~~
3 ~~certified veterinary behaviorist, or another recognized expert~~
4 ~~may be relevant to the court's determination of whether the~~
5 ~~dog's behavior was justified.~~

6 The petitioner must prove the dog is a vicious dog by clear
7 and convincing evidence, however, if the animal control warden
8 has found the dog to be vicious under subsection (a) of this
9 Section, then there shall be a mandatory presumption that the
10 dog is vicious. The animal control warden Administrator shall
11 determine where the animal shall be confined during the
12 pendency of the case. All costs of impoundment, disposition,
13 boarding, medical, or other costs related to the determination
14 of a vicious dog shall be borne by the owner if the animal is
15 found to be a vicious dog under this subsection.

16 A final vicious dog determination by the circuit court
17 under this subsection (a-5) may be appealed pursuant to the
18 civil appeals provisions of the Illinois Supreme Court Rules.
19 If the owner of the dog has not appealed the vicious dog
20 determination within 15 working days, the dog may be
21 euthanized. Upon filing a notice of appeal, the order of
22 euthanasia shall be automatically stayed pending the outcome of
23 the appeal. The owner shall bear the burden of timely
24 notification to animal control in writing. The court proceeding
25 under this subsection (a-5) shall be an available remedy in
26 addition to and independent of the determination of the animal
27 control warden under subsection (a) of this Section.

28 (a-10) A dog may not be declared vicious if the court
29 determines the conduct of the dog was justified because:

30 (1) the threat, injury, or death was sustained by a
31 person who at the time was committing a crime or offense
32 upon the owner or custodian of the dog, or was committing a
33 willful trespass or other tort upon the premises or
34 property owned or occupied by the owner of the animal;

35 (2) the injured, threatened, or killed person was
36 abusing, assaulting, or physically threatening the dog or

1 its offspring, or has in the past abused, assaulted, or
2 physically threatened the dog or its offspring; or

3 (3) the dog was responding to pain or injury, or was
4 protecting itself, its owner, custodian, or member of its
5 household, kennel, or offspring.

6 Testimony of a certified applied behaviorist, a board
7 certified veterinary behaviorist, or another recognized expert
8 may be relevant to the court's determination of whether the
9 dog's behavior was justified.

10 (a-15) No dog shall be deemed "vicious" if it is a
11 professionally trained dog for law enforcement or guard duties.
12 Vicious dogs shall not be classified in a manner that is
13 specific as to breed, but the breed of the dog may be relevant
14 in a determination as to whether an individual dog is vicious
15 under this Section.

16 If the burden of proof has been met, the court shall deem
17 the dog to be a vicious dog.

18 (a-20) If a dog is found to be a vicious dog, the owner
19 shall pay a \$100 public safety fine to be deposited into the
20 Pet Population Control Fund, the dog shall be spayed or
21 neutered within 10 days of the finding at the expense of its
22 owner and microchipped, if not already, and the dog is subject
23 to enclosure. If an owner fails to comply with these
24 requirements, the animal control agency shall impound the dog
25 and the owner shall pay a \$500 fine plus impoundment fees to
26 the animal control agency impounding the dog. The judge has the
27 discretion to order a vicious dog be euthanized. A dog found to
28 be a vicious dog shall not be released to the owner until the
29 Administrator, an Animal Control Warden, or the Director
30 approves the enclosure. No owner or keeper of a vicious dog
31 shall sell or give away the dog without approval from the
32 Administrator or court. Whenever an owner of a vicious dog
33 relocates, he or she shall notify both the Administrator of
34 County Animal Control where he or she has relocated and the
35 Administrator of County Animal Control where he or she formerly
36 resided.

1 (b) It shall be unlawful for any person to keep or maintain
2 any dog which has been found to be a vicious dog unless the dog
3 is kept in an enclosure. The only times that a vicious dog may
4 be allowed out of the enclosure are (1) if it is necessary for
5 the owner or keeper to obtain veterinary care for the dog, (2)
6 in the case of an emergency or natural disaster where the dog's
7 life is threatened, or (3) to comply with the order of a court
8 of competent jurisdiction, provided that the dog is securely
9 muzzled and restrained with a leash not exceeding 6 feet in
10 length, and shall be under the direct control and supervision
11 of the owner or keeper of the dog or muzzled in its residence.

12 Any dog which has been found to be a vicious dog and which
13 is not confined to an enclosure shall be impounded by the
14 Administrator, an Animal Control Warden, or the law enforcement
15 authority having jurisdiction in such area.

16 If the owner of the dog has not appealed the impoundment
17 order to the circuit court in the county in which the animal
18 was impounded within 15 working days, the dog may be
19 euthanized.

20 Upon filing a notice of appeal, the order of euthanasia
21 shall be automatically stayed pending the outcome of the
22 appeal. The owner shall bear the burden of timely notification
23 to animal control in writing.

24 Guide dogs for the blind or hearing impaired, support dogs
25 for the physically handicapped, and sentry, guard, or
26 police-owned dogs are exempt from this Section if ~~provided,~~
27 an attack or injury to a person occurs while the dog is
28 performing its duties as expected. To qualify for the exemption
29 under this paragraph ~~Section~~, each such dog shall be currently
30 inoculated against rabies in accordance with Section 8 of this
31 Act. It shall be the duty of the owner of such exempted dog to
32 notify the Administrator of changes of address. In the case of
33 a sentry or guard dog, the owner shall keep the Administrator
34 advised of the location where such dog will be stationed. The
35 Administrator shall provide police and fire departments with a
36 categorized list of such exempted dogs, and shall promptly

1 notify such departments of any address changes reported to him.

2 (c) If the animal control agency has custody of the dog,
3 the agency may file a petition with the court requesting that
4 the owner be ordered to post security. The security must be in
5 an amount sufficient to secure payment of all reasonable
6 expenses expected to be incurred by the animal control agency
7 or animal shelter in caring for and providing for the dog
8 pending the determination. Reasonable expenses include, but
9 are not limited to, estimated medical care and boarding of the
10 animal for 30 days. If security has been posted in accordance
11 with this Section, the animal control agency may draw from the
12 security the actual costs incurred by the agency in caring for
13 the dog.

14 (d) Upon receipt of a petition, the court must set a
15 hearing on the petition, to be conducted within 5 business days
16 after the petition is filed. The petitioner must serve a true
17 copy of the petition upon the defendant.

18 (e) If the court orders the posting of security, the
19 security must be posted with the clerk of the court within 5
20 business days after the hearing. If the person ordered to post
21 security does not do so, the dog is forfeited by operation of
22 law and the animal control agency must dispose of the animal
23 through adoption or humane euthanization.

24 (f) The animal control warden shall follow guidelines
25 promulgated by the Department for determining that a dog is
26 vicious under subsection (a) of this Section. The purpose of
27 these guidelines shall be to promote uniformity in the
28 application of this Section. In adopting these guidelines, the
29 Department shall follow the rulemaking procedures of the
30 Illinois Administrative Procedure Act. The guidelines shall be
31 made available to the public via Department website.

32 (Source: P.A. 93-548, eff. 8-19-03; 94-639, eff. 8-22-05.)

33 Section 99. Effective date. This Act takes effect upon
34 becoming law.